DRN-4963395

The complaint

A limited company, which I will refer to as T, complains about the handling by Hiscox Insurance Company Limited of its business interruption insurance claim, made as a result of the COVID-19 pandemic.

What happened

The following is intended only as a brief summary of the events leading to this complaint, as these are known by both parties. Additionally, whilst various individuals have been involved in the process – other than where necessary – I have just referred to T and Hiscox for the sake of simplicity.

T was insured as a "Soft Furnishings Retailing" business by a commercial policy underwritten by Hiscox. In March 2020, T's business was impacted by the COVID-19 pandemic and related government-imposed restrictions. T ultimately made a claim under the policy. Currently, T is only pursuing its claim for losses sustained due to the first national lockdown, though it also has claims relating to later restrictions.

The progression of the claim took some time, and involved a number of Hiscox's agents. I have not commented on these events in any detail here. Hiscox ultimately said that the only part of T's losses that could be claimed for was that related to the direct sale of goods within T's premises, rather than any of the design services carried out. Hiscox also said that T had not provided full details of its accounts and sales records to demonstrate the level of this loss. So, it was not able to settle any of T's insured losses. Hiscox had paid T a £2,500 interim settlement payment, and said that it would not look to recover this. Hiscox also paid T £500 for the issues it had experienced during the claim process.

T brought its complaint about this to the Financial Ombudsman Service. T considered that its method of operation had not been taken into account, and that it was not appropriate to consider that the government restrictions only applied to businesses operating a single point of sale. T considers that its sales process always starts with a client visiting its premises and so all sales were prevented by the government restrictions. T also considers that it has provided Hiscox with relevant information and that Hiscox can visit its premises if it needs more.

However, our Investigator did not recommend that the complaint should be upheld. He thought Hiscox had acted fairly and reasonably by considering that the design services element of T's business was not something that the government restrictions had prevented. And that whilst there was undoubtedly a hindrance of this part of T's operation, this was not enough to satisfy the requirements of the insuring clause. He also thought it was appropriate for Hiscox to require T to provide it with further information in order to calculate any insured loss.

T remained unsatisfied. It said that rather than being a design led team with some one-off sales, it was a non-essential retailer of soft furnishings who can also offer design services. It said that its invoice records support this, and Hiscox could come to its premises to view these. T does not consider it can provide copies of these invoices, due to data protection

concerns.

As our Investigator was unable to resolve the complaint, it has been passed to me for a decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I am not upholding this complaint. I'll explain why.

Firstly, before I expand on my reasoning, I will just note that both parties have provided detailed submissions. And T has raised a number of individual points. I am not going to address all of this evidence and each of these points though. Instead, I am going to focus on what I consider to be the key outstanding issues. This is not intended as a discourtesy, but rather reflects the informal nature of the Ombudsman Service.

I have also tried to provide some wider commentary, without making specific findings on what aspects of T's business might and might not be covered. I do think that a full assessment of this would only be possible with full details of T's invoices – and potentially any project plans it has. But hopefully my comments will help T to understand why this is required by Hiscox. I will also address the issue of whether Hiscox's request for this information to be sent to it is fair and reasonable.

The starting point is to consider the relevant cover provided by the policy T had. I have considered the whole policy, and the parties are aware of its content. But the key clause says cover is provided for loss of profit due to:

> "your inability to use the business premises due to restrictions imposed by a public authority during the period of insurance following…
>
> b. an occurrence of a notifiable human disease within one mile of the business premises;"

COVID-19 is a notifiable human disease and it isn't disputed that this did occur within one mile of T's premises. (I will just add as an aside here that the "FCA COVID Calculator" was not launched until after the start of March 2021, when there were initial issues with evidencing such an occurrence. So, whilst I appreciate T's comments that Hiscox ought to have referred to this calculator, it doesn't seem it would have been possible at that time.)

The question is whether there was an inability to use T's premises for its business due to restrictions imposed by a public authority. Hiscox has said that T's losses in relation to direct sales would be covered, subject to these being evidenced (I've returned to this point below). So, it seems Hiscox accepts that T's business is able to claim. But Hiscox's position is that all that can be claimed is the direct loss from the prevention of use of the premises for sales.

The relevant restrictions, as they relate to the first national lockdown, are best described by looking at the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, introduced on 26 March 2020. Regulation 5 of these said:

> "A person responsible for carrying on a business, not listed in Part 3 of Schedule 2, of offering goods for sale or for hire in a shop… must, during the emergency period… cease to carry on that business or provide that service…"

There were various exclusions to the list of businesses, and the exact circumstances where restrictions applied. But I do not consider these are overly relevant to the current complaint.

It should be noted, and I do appreciate, that many businesses will have closed even though they might not have strictly been required to by the regulations. Some of this was due to the wider impacts of the pandemic reducing demand, etc. But businesses had to make sudden and unexpected decisions, with limited information. And many business owners made the decision for moral reasons, to protect staff and the wider public. Whilst such action can be lauded, this does not mean that losses will be covered by insurance.

It is necessary for Hiscox to determine whether T's business was one that was required to close – or more precisely, whether its use of its premises had been prevented. It should be noted that a hindrance of use would not suffice, and that an inability is required. But that either use of part of the premises, or a part of T's business operations being prevented, could lead to a valid claim for losses relating to that part.

This will be largely determined by how T's business operates. With regard to this, I have considered the information provided by both parties, as well as looking at T's website – both the current version and that which existed prior to the pandemic. There was clearly a mix of selling and designing involved in T's business. And I do think that a proper assessment would only be possible with the further information Hiscox has requested – so the following should only be read as my commentary, rather than as specific findings.

It does not seem likely that T's sales were made over the internet (the website does not have this function) or by phone. So, I agree it is more likely than not that T's business model at the time relied upon customers visiting the premises.

I am also not persuaded that it would have been realistic for T to switch to a non-premises sales model. Clearly, there is a significant reliance on having clients look through the available materials before they are able to make a purchase.

I have noted that T's website did indicate that site visits were possible, and that this could include providing samples – so there is an indication here that not all sales were (solely) reliant on being in T's premises. And, whilst actually entering client's private residences may have been difficult, there would have been the option to leave such sample with clients (though I appreciate T's comments about the practicalities involved). However, the relevant question is whether there was a loss of profit due to the inability to use the premises.

Having to change its operations in this way would no doubt have been hugely inconvenient for T and would likely have significantly reduced the number of actual sales generated – whilst also likely increasing the overall costs to the business, thus reducing profitability. So, the inability to use the premises would most likely have caused a loss that should be recoverable.

It should be noted that the hindrance of use discussed in the FCA test case is about hindrance of use of the premises, rather than hindering the overall ability of the business to function. And whilst a business should act to minimise its losses, the increased costs of working involved in making such a change to its operations may not have led to any overall reduction in losses. As T didn't make these changes to its operations, it isn't possible to determine how effective this would have been or whether the associated increased cost in working would have led to any overall saving though.

Given the operation of T's business seems to be hugely reliant on having an extensive range of samples, and the limitations with providing a broad selection to leave with clients, I am inclined to think this change of operation would have had very little overall benefit. I do recognise that I am making a number of assumptions here though and I would not be in a position to make any formal finding.

I do also appreciate that T's existing model did offer the option of samples being brought to clients. And clearly this would have been with the intention of generating a sale – so must have been successful to an extent. However, I am inclined to think that the samples brought to site would have been limited by way of an initial visit to the premises. It doesn't seem feasible for a full selection to have been brought to site, nor for the selection to have been significantly limited via an initial phone call. So, even though the existing model could have been built upon, without the initial client visit to premises, I am doubtful there would have been a significant saving against the loss of profit caused by the inability to use the premises.

But this does not mean that all income that would otherwise have been derived from such visits to the premises would be an insured loss in the circumstances of the claim. That would depend on the type of work then carried out at and following such a visit.

Hiscox has said that carrying out designing work is not "offering goods for sale". I would agree with this. There is an element of a sales process where products are demonstrated, etc. In T's case, this likely includes customers viewing the various samples of fabrics and so on that T carries. But I do not think this extends to carrying out work to draw up plans, create interior designs, etc.

T has indicated that the design functions are secondary. Certainly, its website indicates that some of its design advice is free of charge. Clients were, at least prior to the pandemic, able to have a free initial consultation in T's premises. And if this formed the core of T's business model, not charging for this service would be nonsensical.

It would seem likely that some visits to the premises would lead to either a sale of something on site or available to order, or the sale of goods that needed to be made. Where such an activity took place, as long as the ordering of the goods took place during the visit to the premises, I would consider this to be part of "offering goods for sale" and such activity would have been prevented by the regulations. Hiscox seemingly agrees with this in general terms.

The actual manufacturing of the goods is unlikely to have been prevented by the regulations. Manufacturing businesses were not required to close. But without an initial sale, there would be no order to manufacture. So, where orders were prevented, by the regulations preventing the use of the premises to sell goods, the entire income relation to this would likely be an insured loss. It isn't clear that T actually carries out any manufacturing though. It may well create or tailor certain goods (cutting curtains to size for example). But it also isn't clear that there is an additional income generated by this activity over the cost to the client of purchasing the goods in the first place. Hiscox has not said whether or not it considers such income would be covered, but if this is part of the overall cost to the client of the purchase, there does not appear to be an issue here anyway. This is part of the lost sales income.

Further design and other services offered by T would be charged for separately though. These services seemingly include preparation of mood-boards, project management and site visits. I do not consider it would be reasonable to consider these to be part of "offering goods for sale". I do recognise there is an argument that, for example, in preparing a mood-board or carrying out a (pre-sale) site visit, T would have likely been trying to point clients toward purchasing goods from or through T itself. But I don't think it would be fair or reasonable consider this to be part of the actual sales process. This was a paid-for additional service.

The provision of project management is a more complex issue though. T has said that "project management" is not referred to on its website. Whilst this the case now, its website prior to the pandemic did offer this.

Project management is an additional service. But in most cases this is likely to be something

that only arises following a sale. If a sale is not possible during the indemnity period, it follows that the project management that is linked to the sold items would not then exist. In such circumstances, I do think this would likely be an insured loss. Hiscox has not indicated whether or not it would include such losses within any settlement. Without consideration of the exact income T has previously generated, and an understanding of how this is generated, it is not really possible to make an assessment of this. And my commentary here should not be taken as a specific finding.

If the project management is not in relation to goods purchased through T though, and is a separate service that is being provided, this would not have been prevented by an inability to use T's premises. So, there would likely be no cover for these losses. Similarly, if a sale took place prior to the indemnity period, but the project management work that was due to take place was then prevented by the pandemic, this would not be an insured loss. This loss wouldn't have been caused by an inability to use T's premises.

There may be other elements of T's business that either fall within the scope of what would be part of, or a direct consequence of, "offering goods for sale". Consideration of these aspects, and what the relevant splits between these parts of the business, is not fully possible without the invoices relating to these sales and activities though.

At which point it is necessary to consider the situation regarding this evidence. Again, the starting point is to consider the policy, which says:

> "We will not make any payment under this policy unless you… give us, at your expense, any information which we may reasonably require and co-operate fully in the investigation of any claim under this policy."

The policy does allow for reasonable charges paid to an accountant to producing this information where required.

Alongside the specific policy requirement, it is a general principle that, in order to make a claim, a policyholder will first need to evidence their losses – and that they are insured losses. Where necessary, the onus would then shift onto the insurer to evidence that exclusions or limitations apply that might limit cover in the circumstances.

So, the question is, is has T already evidenced its losses and that these are insured losses, or is Hiscox's request for information reasonable?

T has provided some accounting information, and also given a brief statement of its own concerning the breakdown of its income sources. However, I do not consider this would be sufficient to allow for a consideration of the issues referred to above or the other issues relating to the claim (for example the split of commercial and domestic work). And I am persuaded that Hiscox's request for these invoices to be sent to it to be fair and reasonable in the circumstances. This is also in line with how other claims have been dealt with by Hiscox and other insurers.

T considers that Hiscox ought to visit its premises to look at its invoices, rather than have T copy and provide these to Hiscox. T has said that there are data protection concerns with providing copies of its invoices to Hiscox. But these would likely exist even where Hiscox was merely given access to the invoices on T's premises. And I consider that the suggestion of having these redacted is fair and reasonable.

I note that Hiscox did visit T's premises. There is some dispute over whether Hiscox was provided access to the invoices on this occasion. But, whether or not access was provided then, I am persuaded that it is reasonable that Hiscox be provided with a copy of these now. The commentary above highlights that the analysis of the claim is unlikely to be

straightforward or something that could take place on T's premises during one visit.

Ultimately, I consider Hiscox's request to be provided with a copy of T's invoices is fair and reasonable. I appreciate that this will cause T significant inconvenience – particularly taking into account the fact T has other claims to make. However, that is an unfortunate consequence of having to make a claim of this nature, rather than as a result of Hiscox making an unreasonable request.

I also consider that, until Hiscox has been provided with these invoices, it is fair and reasonable for Hiscox to take the position that T has not evidenced that it has a valid claim. So, at this point, there is no settlement due under the claim. Hiscox is open to receiving the required evidence and then assessing the claim. Should T ultimately be unhappy with whatever decision is then reached on the claim, it would need to raise a new complaint about that. But hopefully both parties can bear the general discussion points above in mind and reach an amicable outcome to the claim(s).

Having said that it is reasonable for Hiscox to require T to provide additional information in order to assess the claim, it is also clear that Hiscox's handling of the claims process was not up to the required or expected standard. Hiscox itself has acknowledged this.

Some issues were undeniably avoidable. For example, Hiscox has at times referred to T as being a kitchen and bathroom provider. All parties now agree that this is not the case, and it is not clear where this reference came from. It is also likely that, even where there have been points of dispute that have now been resolve, Hiscox could have been clearer at an earlier stage. And there were various issues with communications generally.

Additionally, whilst I am not persuaded that Hiscox took deliberate actions to change the loss adjusters working on T's claim, its decisions with regard to the loss adjusters it was using for the sum of its claims did have an impact on T. Hiscox would likely have been dealing with thousands of claims for business interruption and the decisions it made regarding the loss adjuster firms it was using were taken across the board. But these actions meant that T had to deal with multiple loss adjusters, and was caused added inconvenience as a result of this.

As I say though, making a claim of this nature is inherently inconvenient. I can only take into account the inconvenience that ought reasonably to have been avoided. I also appreciate that the entire process would have been frustrating for T's directors. However, the complainant in this case is the policyholder, which is T itself. T is a limited company and is unable to suffer frustration or distress.

Taking these points into account, I am persuaded Hiscox's offer of £500 is fair and reasonable in the circumstances.

I appreciate T and its directors are unlikely to be satisfied with this outcome. And they do have my sympathies. They have been impacted by circumstances largely outside of their control and T has suffered a financial loss. But ultimately, I consider it is fair and reasonable for Hiscox to require the additional financial information it has requested before it can make a full assessment of the claim. And I cannot fairly and reasonably direct Hiscox to do more at this point.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 28 April 2025.

Sam Thomas
Ombudsman